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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. [redacted] 30

THE KLAMATH AND MOADOC TRIBES AND YAHOOSKIN BAND OF SNAKE INDIANS,
Petitioners,

v.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND SUPPORTING BRIEF.

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DANIEL B. HENDERSON,
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Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 901

THE KLAMATH AND MOADOC TRIBES AND YAHOOSKIN BAND OF SNAKE INDIANS,

Petitioners,

v.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Claims in this case, rendered April 8, 1935.

That these Indians have suffered a great wrong at the hands of the Government of the United States is indisputable on the face of the facts found by the Court.

A part of their lands in the State of Oregon, worth at the time under the title possessed by them $2,980,000 as found by the Court, Finding XI, was taken from them without their knowledge or consent by the Secretary of the Interior under authority of an act of Congress approved June 21, 1906, Ch. 3504, 34 Stat. 325, 368, and transferred to a pri-

vate land company, and all that they ever received in the way of compensation was a payment of $108,750.

To recover the balance of the just compensation due them they brought this suit under an act of Congress approved May 26, 1920, Ch. 203, 41 Stat. 623, printed in full in the Findings of Fact, I, authorizing the Court of Claims to hear "all claims of whatsoever nature which the Klamath etc. Indians * * * may have against the United States, which have not heretofore been determined by the Court of Claims * * * *, for the failure of the United States to pay said Indians any money or other property due."

Solely on the ground that 150 adult male members of the Tribes, out of a total adult membership of 640 (287 males and 353 females), signed a paper purporting to accept the $108,750 in full payment and to release all claims against the United States for the land involved, the Court of Claims held this claim to be barred, notwithstanding that the matter was never submitted to a vote of the Tribes, and notwithstanding that the 150 Indians who signed the purported release were without authority to represent the Tribes and without knowledge of the value of the land, and notwithstanding, also, that the act of Congress itself expressly provides that "*any* payment which may have been made upon any claim so submitted shall *not* be pleaded as an estoppel," § 2. [Italics ours.]

Short Statement of the Case.

In 1864 these Indians held by immemorial possession over 20,000,000 acres of land in what are now the States of Oregon and California. Their title was not disputed. Finding II, R. 21.

In that year they ceded these lands to the United States by treaty, 16 Stat. 707, reserving however for their ex-

clusive use and occupancy a specified area, Art. I, which came to be known as the Klamath Indian Reservation.

Thereafter, in executing grants of land by Congress in aid of the construction of a road across the State of Oregon the Department of the Interior erroneously issued patents to the Oregon Central Military Road Company for 111,385 acres within the admitted boundaries of the Klamath Indian Reservation. Findings V, VI, R. 21-22.

Pursuant to an act of Congress, Ch. 377, 25 Stat. 850, the Attorney General brought suit to recover the 111,385 acres, charging that the patents had been obtained by fraud, but the suit was unsuccessful, the lands having passed to a purchaser in good faith, the California & Oregon Land Company. Finding VII, R. 22.

The 111,385-acre tract was located in a part of the Klamath Indian Reservation that had been allotted to members of the Tribes in severalty, Finding VII, R. 23, and they complained "bitterly," Finding VIII, R. 23.

By an act approved March 3, 1905, Ch. 1460, 33 Stat. 1033, Congress directed the Secretary of the Interior to ascertain the value of these lands, and also for what price the California & Oregon Land Company would convey them back to the United States, or on what terms it would exchange them for other lands within the Reservation not theretofore allotted to individual members of the Tribes.

Eventually, on August 22, 1906, under authority of the beforementioned act of Congress of June 21, 1906, Ch. 3504, 34 Stat. 325, 368, the Secretary of the Interior, without the knowledge or consent of the Tribes, concluded an agreement with the California & Oregon Land Company under which the 111,385-acre tract was conveyed back to the United States in exchange for 87,000 acres of "immensely valuable timber lands in another section of the Reservation." Finding X, R. 24; Opin., R. 31.

As before stated, in 1906 the value of the 87,000-acre tract to the Tribes, under the title possessed by them, was $2,980,000, as found by the Court of Claims. Finding XI, R. 24.

By an Act approved April 30, 1908, Ch. 153, 35 Stat. 70, 92, Congress appropriated $108,750 to be deposited in the Treasury to the credit of the Tribes upon the execution by them, "through the usual channels," of a release "of any claims and demands of every kind against the United States for the land involved." Finding XIII, R. 25.

So far as the findings show, no release was ever authorized or approved by any tribal action. While a general council of the members of the Tribes was called by the Superintendent of the Reservation to consider the matter, opposition developed, and no vote was taken. Findings XV, XVI, R. 25-26.

However, a release was signed at different times by 150 adult male members of the Tribes, Finding XVII, R. 26, out of a total adult Indian population of 640, of whom 287 were men and 353 women, Finding XV, R. 25, and thereupon the $108,750 was deposited in the Treasury to the credit of the Tribes, Finding XIX, R. 27.

The Indians testified without contradiction that they "relied upon the fairness of the United States to pay what the lands were worth to them, and acted without knowledge of the true value of the same, believing that failure to assent meant the loss of the money and the lands as well." Opin. R. 39-41.

On May 26, 1920, Congress passed the beforementioned act, Ch. 203, 41 Stat. 623, authorizing the Court of Claims to hear "all claims of whatsoever nature which the Klamath and Moadoc Tribes of Indians and the Yahooskin Band of Snake Indians * * * may have against the United States, which have not heretofore been determined by the

Court of Claims * * *, for determination of the amount, if any, due said Indians from the United States

"under any treaties, agreements, or laws of Congress, or

"for the misappropriation of any of the funds of said Indians, or

"for the failure of the United States to pay said Indians any money or other property due." § 1.

It was further provided that the rights of the parties shall be determined "notwithstanding lapse of time or statutes of limitation," and that "any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset * * *, and that the United States shall be allowed credit for all sums, including gratuities, heretofore paid or expended for the benefit of said Indians or any band thereof." § 2.

Pursuant to this statute the present suit was brought to recover money due the tribes of the Klamath Indian Reservation as just compensation for the taking of the 87,000 acres of their lands, deducting, of course, the $108,750 already received.

The Court of Claims, as aforesaid, held the release to be a bar and dismissed the suit.

The Issues.

The petitioners maintain—

First, that the Act of May 26, 1920, in authorizing the Court of Claims to hear "all claims of whatsoever nature which the Klamath etc. Indians * * * may have against the United States, which have not heretofore been determined by the Court of Claims * * *, for the failure of the United States to pay said Indians any money or other

property due," § 1, and in further providing that "any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel," lifted the bar of the alleged release and opened the way for the determination of the present claim on the merits.

Second, that in any event the alleged release signed by 150 individual members out of a total adult membership of 640 was not binding on the Tribes, because not authorized or approved by vote of a majority in general council, or by other form of tribal action, and because signed under duress.

Reasons Relied Upon for Allowance of the Writ.

1. The Court of Claims erred in holding the claim sued upon to be not within the jurisdictional act.

2. The Court of Claims erred in holding that individual members of the Tribes, less than a fourth of the total adult membership, without authority to act for the Tribes, could surrender property rights belonging to the Tribes.

3. The Court of Claims erred in not holding that the members of the Tribes who signed the alleged release did so under duress.

4. The Court of Claims erred in its construction and application of the jurisdictional act in respect of items of set-off claimed by the United States.

5. The decision of the Court of Claims that the claim sued upon is not within the jurisdictional act is in conflict with the decision of this Court constructing the jurisdictional act in the case of the *Choctaw Nation* v. *The United States*, 119 U. S. 1, 30 L. Ed. 306.

6. The decision of the Court of Claims leaves the Indians of the Klamath Reservation without compensation, other

than the payment of $108,750, for lands taken from them without their knowledge or consent worth at the time under the title possessed by them $2,980,000.

7. Whether these "weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith," *Carpenter* v. *Shaw*, 280 U. S. 363, 367, 74 L. Ed. 478, 481, shall continue to be deprived of the just compensation to which they are entitled, when Congress has authorized them to bring suit on "all claims of whatsoever nature • • • which have not heretofore been determined by the Court of Claims • • •, for the failure of the United States to pay said Indians any money or other property due," and at the same time has provided that "any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel," and whether individual members of an Indian tribe may relinquish property rights of the tribe without being thereunto authorized by vote of a majority in a general council, are questions of general importance in the relations between the United States and the Indian tribes. Compare *Yankton Sioux Tribe* v. *United States*, 272 U. S. 351, 71 L. Ed. 294, where certiorari was granted.

8. The provision that "any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel," occurs in other acts of Congress authorizing suits by the Indian tribes in the Court of Claims, for example, the Act of December 17, 1928, 45 Stat. 1027; the Act of February 20, 1929, 45 Stat. 1249; the Act of February 23, 1929, 45 Stat. 1256; the Act of February 28, 1929, 45 Stat. 1407; the Act of December 23, 1930, 46 Stat. 1033; the Act of March 3, 1931, 46 Stat. 1487; the Act of April 25, 1932, 47 Stat. 137. The provision has never been construed by this Court, nor by the Court of Claims except in this case, and it is important that its meaning be settled.

9. The opinion of the Court of Claims states, Rec. 29:

> "The case is one of importance, involving acute disputation as to certain facts and important legal questions."

And the provision of the jurisdictional act giving either party an appeal to this Court as a matter of right, while no longer operative after the Act of February 13, 1925, Ch. 229, § 3 (b) (c), 43 Stat. 936, 939, changing the method of reviewing decisions of the lower courts, nevertheless shows that Congress considered the case one of general importance.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket, No. E-346, the *Klamath and Moadoc Tribes and Yahooskin Band of Snake Indians, Plaintiffs, v. The United States of America, Defendant,* and that the said judgment of the Court of Claims may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

THE KLAMATH AND MOADOC TRIBES AND
YAHOOSKIN BAND OF SNAKE INDIANS,
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BRIEF IN SUPPORT OF THE PETITION.

Opinion Below.

The opinion of the Court of Claims together with its amended special findings of fact and conclusion of law are in the printed record beginning at page 18. The opinion has not yet been officially reported.

Jurisdiction.

The jurisdiction of this Court is invoked under § 3 (b) of the Act of Congress approved February 13, 1925, Ch. 229, 43 Stat. 936, 939.

The case was first decided November 5, 1934. R. 18. On November 24, 1934, plaintiffs moved for a new trial and to amend the special findings of fact, and on November 28, 1934, the defendant moved to amend the special findings of fact. R. 18.

On April 8, 1935, an order was entered overruling the motion for a new trial and allowing in part and overruling in part the motions to amend the findings, R. 18, and on the same day judgment was entered dismissing the petition. R. 41.

Statement of the Case.

The case is stated in the petition. [illegible]e.

Specification of Errors.

The Court of Claims erred—

1. In holding the claim sued upon to be not within the jurisdictional act.

2. In holding that a majority of the male adult members of the petitioning Tribes, by signing a release, could surrender property rights belonging to the Tribes without

the authorization of a general council of the members of the Tribes.

3. In not holding that the members of the Tribes who signed the alleged release did so under duress.

4. In construing and applying the jurisdictional act in respect of items of set-off claimed by the United States on account of expenditures for administration, enforcement of the laws, and police, including agency buildings, incidental agency expenses, and pay of Indian agents, interpreters, judges of the Indian courts, and miscellaneous employees, and pay and equipment of Indian police; for erection and repair of flour mill, manual labor school, saw mill, and hospital; for Indian school and agency buildings; for tools and materials for blacksmith shop, carpenter shop, flour mill, saw mill, and wagon and plow-maker shop; for books and stationery, manual labor school; for pay of blacksmith, carpenter, farmer, miller, physician, sawyer, superintendent of farming, teachers, and wagon and plow-maker; for subsistence; for transportation by carrier; and for education of children of the Tribes at schools off the Reservation.

Question Presented.

The primary question is whether the claim of the petitioners for just compensation for land taken from them under authority of an Act of Congress, worth at the time, as found by the court, $2,980,000, comes within the scope of the jurisdictional act, or whether the claim is barred by acceptance of a payment of $108,750 and the signing of a release by 150 adult male members of the Tribes out of a total adult membership of 640 (287 men and 353 women) without the authorization of a general council of the members of the Tribes.

Points of Argument.

I. The jurisdictional act removes the bar of the alleged release and reopens the claim for determination on the merits.

II. The alleged release was not the act of the Tribes of the Klamath Reservation and therefore was ineffective as a surrender of any rights or claims of the Tribes.

III. The Indians who signed the alleged release did so under duress.

THE ARGUMENT.

Point I.

The jurisdictional act removes the bar of the alleged release and reopens the claim for determination on the merits.

The jurisdictional act submits to the Court of Claims "all claims of whatsoever nature which the Klamath Indians • • • may have against the United States, *which have not heretofore been determined by the Court of Claims,* • • • for determination of the amount, if any, due said Indians from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation of any of the funds of said Indians, or for the failure of the United States to pay said Indians any money or other property due," § 1, with power "to hear and determine all legal and equitable claims, if any, of said Indians, against the United States, and to enter judgment thereon," § 1; and it waives the defenses of limitations and estoppel against such claims, directing that the Court "settle the rights therein, both legal and equitable, of each and all the parties thereto notwithstanding lapse of time or statutes of limitation, *and any payment which may have been made*

upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an off-set * * *." § 2. [Italics ours.]

Save for the exception of claims heretofore determined by the Court of Claims, the act could be no broader, and in making that specific exception Congress itself has recognized that the description of the claims authorized to be submitted was so comprehensive as to admit of no exception unless expressly made.

Had Congress intended to except also claims in respect of which the Indians had given or purported to give a release or receipt in full it must be presumed that it would have been equally explicit in saying so.

In addition, the jurisdictional act expressly provides that—

> "*any* payment which may have been made upon any claim so submitted *shall not be pleaded as an estoppel,* but may be pleaded as an off-set * * *." § 2. [Italics ours.]

Unless this provision shall be construed as applicable to a payment made and accepted at the time as payment in full it would mean nothing, since, of course, in no event would acceptance of a partial payment operate as an estoppel.

Any other construction of the jurisdictional act, moreover, would give an unconscionable effect to the provision that "the United States shall be allowed credit for all sums, including gratuities, heretofore paid or expended for the benefit of said Indians." Except in return for a general reopening of the claims of these Indians for adjudication on the merits, it is unthinkable that Congress should have taken back everything the United States had ever given them at any time as a condition of allowing them to sue the United States to recover money the United States owed them. In other words, the evident purpose—putting out of

view claims already adjudicated by the Court of Claims—was to arrive at a just settlement *de novo*, forestalling all pleas in bar based on estoppel or limitations on the one side or on the irrevocability of absolute gifts on the other.

If the language of the jurisdictional act had left the matter in any doubt, which, as we think, it does not, the doubt would be removed by the Reports of the Committees on Indian Affairs of the House of Representatives and the Senate recommending the passage of the act. H. Rep. No. 672, 66th Cong., 2nd Sess.; S. Rep. No. 548, 66th Cong., 2nd Sess.

While the act is not limited to any specific claim or claims, in pressing for its passage the spokesmen for the Indians concentrated upon a long-standing claim growing out of a boundary controversy. *Ibid.*

In an act approved June 10, 1896, Ch. 398, 29 Stat. 321, 342, Congress had taken cognizance of a claim of the Indians of the Klamath Reservation that by an erroneous survey they had been deprived of lands within the boundaries of their Reservation as defined in the Treaty of October 14, 1864, 16 Stat. 707, and had authorized the President to appoint a commission to determine the correct location of the boundaries according to the terms of the Treaty. Later in the same year, 1896, the Commission made a report determining the boundaries of the Reservation in accordance with the terms of the Treaty, and finding that a large area had been excluded from the Reservation by an erroneous survey of the boundaries in 1871. H. Rep. No. 672, 66th Cong., 2nd Sess., p. 7.

Thereafter, under authority of an act of Congress approved July 1, 1898, Ch. 545, 30 Stat. 571, 592, the Secretary of the Interior concluded an agreement with the Indians dated June 17, 1901, subject to ratification by Congress, in which the Indians ceded to the United States the land found to have been excluded from their reservation

by the erroneous survey, 621,824 acres, H. Rep. No. 672, 66th Cong., 2nd Sess., p. 8, and the United States in consideration therefor, agreed to pay them $537,007.20, "*in full of all claims and demands of said Klamath and other Indians arising or growing out of the erroneous survey of the outboundaries of their Reservation in* 1871." Art II. [Italics ours.]

This agreement was set forth and ratified in an act of Congress approved June 21, 1906, Ch. 3504, 34 Stat. 325, 367-368, and the sum of $537,007.20 was appropriated to be paid the Indians in accordance with its terms, 34 Stat. 368.

Here then was an agreement between the Indians of the Klamath Reservation and the United States entered into with all the formalities of a treaty in full settlement of all claims growing out of the boundary dispute.

Now, as before stated, these were the claims most urged when the jurisdictional act was under consideration, and chief among the claims set forth in the Report of the House Committee on Indian Affairs as the occasion for recommending passage of the act, H. Rep. No. 672, 66th Cong., 2nd sess., pp. 7-15, *and the Committee not only knew of the settlement agreement of June* 17, 1901, *but copied it in full in its Report, Ibid.*, pp. 8, 13, 19. The bill having passed the House, it was reported favorably by the Senate Committee on Indian Affairs, with a reference to the Report of the House Committee, S. Rep. No. 548, 66th Cong., 2nd sess., so that the Senate Committee also had knowledge of the settlement.

So, we repeat, if the language of the jurisdictional act had left the matter in any doubt, the legislative history makes it clear beyond question that Congress intended the act to include claims which had been the subject of prior settlement agreements between the Indians and the United States as well as unsettled claims.

In *Choctaw Nation* v. *United States*, 119 U. S. 1, 30 L. Ed. 306, the Act of Congress of March 3, 1881, under which the suit was brought, authorized the Court of Claims "to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon," with power "to review the entire question of differences *de novo*." 119 U. S. 2, 20 L. Ed. 306. One group of claims asserted in the suit was for failure of the United States fully to perform its obligations under Article 14 of the Treaty of 1830. 119 U. S. 5, 30 L. Ed. 307. However, the Choctaws had previously received from the United States a payment of $872,000 in respect of these claims, and had executed, as the act of Congress appropriating the money required, "a final release" of such claims, and the United States, just as in the present case, pleaded this release in bar on the theory that only *unsettled* claims came within the jurisdictional act. 119 U. S. 14-15, 26, 43-44, 30 L. Ed. 310-311, 314, 320. As in the present case, the Court of Claims sustained the plea, 21 Ct. Cl. 59, 71, 101-104, but this Court reversed the decision, saying:

> "Under the terms of the act of March 3, 1881, in exercising the jurisdiction thereby conferred, the Court of Claims is empowered to review the entire question of differences *de novo*, which may be interpreted to imply that the whole matter was opened from the beginning, with the view of determining what the original treaty rights of the Choctaw Nation were, and how far they have been performed by the United States in its various transactions with them, including the acts done under the authority of the statutes referred to." 119 U. S. 29, 30 L. Ed. 315.

The jurisdictional act in the present case is equally broad. Power to hear and determine "all claims of whatsoever nature • • • for the failure of the United States to

pay said Indians any money or other property due," coupled with a waiver of the defenses of estoppel and limitations, is the equivalent of power "to review the entire question of differences *de novo.*"

Point II.

The alleged release was not the act of the Tribes of the Klamath Reservation and therefore was ineffective as a surrender of any rights or claims of the Tribes.

As regards tribal rights and property, an Indian tribe is not bound, of course, by the acts of individual members holding no authority to represent the tribe. Authority to bind the tribe in such matters is vested in a *general council* of the members. See *Choctaw Nation* v. *United States,* 119 U. S. 1, 18-19, 30 L. Ed. 306, 312; *Pueblo of Santa Rosa* v. *Fall,* 273 U. S. 315, 317-318, 319-320, 71 L. Ed. 658, 659, 660. Acts of Congress also recognize the general council as the proper authority to bind the Indian tribes, and the Tribes of the Klamath Reservation in particular, in the disposition of tribal property. Opin. Ct. Cl., R. 39; Act of March 4, 1933, Ch. 275, § 1, 47 Stat. 1568. So, also, administrative practice, as shown by the instructions of the Commissioner of Indian Affairs to the Superintendent of the Klamath Reservation to call a general council in this case.

The Act of April 30, 1908, appropriating $108,750 to be paid the Tribes of the Klamath Reservation in settlement of their claims growing out of the taking of the 87,000-acre tract did not authorize any departure from this method. On the contrary it expressly provided for a release "through the usual channels," 35 Stat. 92.

The release here was *not* authorized or approved by any general council of the Tribes of the Klamath Reservation.

All that the findings of fact show is that the members of the Tribes were notified to assemble at the Agency Head-

quarters on December 5, 1908, for the purpose of holding a general council to consider acceptance of the provisions of the Act of April 30, 1908, Finding XV, R. 25-26; that about 200 Indians responded and the Superintendent of the Reservation explained the matter, Finding XVI, R. 26; that some opposition developed but in the end the release was signed by 100 or more of the Indians present, Finding XVI, R. 26; that additional signatures were obtained at a subsequent meeting in another part of the Reservation of Indians who seldom attended general councils at the Agency Headquarters, Finding XVII, R. 26; and that the release was signed by 150 adult male members of the Tribes, in all, Finding XVII, R. 26, out of a total adult membership of 640—287 men and 353 women. Finding XV, R. 25.

But the 150 signatures were not all obtained at these two meetings. Nor do the findings so state. Fearing that such might be inferred from the context, the petitioners requested that this finding be clarified, citing the testimony of the Superintendent himself. To this the respondent replied that "the Court did *not* find that the 150 signatures were obtained at the two meetings." Defendant's Objections to Plaintiffs' Motion for New Trial and to Amend the Special Findings of Fact and Make Additional Ones, p. 5. The parties being in agreement as to the meaning and effect of the finding on this point, the Court made no change in it.

Thus it is apparent that the alleged release was never voted on or otherwise authorized or approved at a general council of the Tribes of the Klamath Reservation.

The petitioners asked the Court below to find, in accordance with the uncontradicted evidence, oral and documentary, that a general council of the Tribes of the Klamath Reservation is a meeting of the members of the Tribes, pursuant to call, at which a chairman and a secretary are

elected from the membership and votes taken and minutes of the proceedings kept; that at the meetings here in question no chairman was elected, and no secretary, and no vote was taken on the proposition to accept the $108,750 in settlement of the claims growing out of the taking of the 87,000-acre tract, or on any other matter, and no minutes of the proceedings were taken down or kept.

The defendant objected to these requests on the ground of immateriality, and the Court ignored them, saying:

> "The failure to observe the details of procedure previously followed by the Indians in conducting a council is not fatal." R. 40.

But the very purpose of a general council presided over by a member of the Tribe of the Tribe's own choosing, debating and taking votes in the presence of each other, with a secretary to record the votes and proceedings, is to insure a free and accurate expression of the tribal will.

Assuming, however, that the established methods of organizing and conducting a general council may be ignored, here it cannot even be argued that the signing of the release by 150 male adult members was the *equivalent* of a vote of the majority of the male adult members in general council assembled,[1] because, as just seen, the 150 signed at different times and places.

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[1] The finding that, "The adult males were alone allowed to vote in Indian councils," Finding XV, Rec. 25-26, we challenge as a matter of law, because without any supporting evidence. See *Hathaway & Co.* v. *United States,* 249 U. S. 460, 463, 63 L. Ed. 707, 709; *William Cramp & Sons* v. *United States,* 239 U. S. 221, 232, 60 L. Ed. 238, 243; *United States* v. *Clark,* 96 U. S. 37, 24 L. Ed. 696. However, assuming it to be true, a majority of the male adult members of the Tribes of the Klamath Reservation never voted in favor of the alleged release at any general council of the Tribes, as shown above.

It follows that their act in this regard was not the act of the Tribes and hence was ineffective to surrender tribal property rights.

In *Pueblo of Santa Rosa* v. *Fall*, 273 U. S. 315, 71 L. Ed. 658, this Court decided that a deed to lands belonging to an Indian village executed by the captain of the village for himself and inhabitants of the village was void because its execution had not been authoried by the Indians "in council." 273 U. S. 317-318, 319-320, 71 L. Ed. 659, 660. There is no essential difference between the juridical status and characteristics of an Indian pueblo and an Indian tribe. *United States* v. *Chavez*, 290 U. S. 357, 361, 78 L. Ed. 360, 362; *United States* v. *Sandoval*, 231 U. S. 28, 58 L. Ed. 107; *Montoya* v. *United States*, 180 U. S. 261, 266, 45 L. Ed. 521, 523.

The contention of the Government that the release signed by 150 male adult members of the Tribes was binding on the Tribes, although not authorized or ratified at a general council, was based on the acceptance of the release by the Secretary of the Interior as a "sufficient" compliance with the provisions of the Act of April 30, 1908, Finding XIX, R. 27, and on an agreement dated June 17, 1901 (heretofore referred to in another connection), for the cession of certain lands by the Klamath Tribes to the United States which was executed on the part of the Indians by a majority of the male adults, and which it was said indicated what Congress meant by a release executed "through the usual channels." Government's brief below, pp. 788-790.

The acceptance of the release by the Secretary of the Interior was based, it must be assumed, upon the recital in the release that it was signed by "a majority of the Indians of the Klamath Reservation in council assembled," Finding XVIII, R. 27. This statement was incorrect. As shown above, the release was *not* signed by a majority of the In-

dians nor even by a majority of the male adult Indians *in council assembled.*

As to the agreement of June 17, 1901, *before* its execution the terms of the agreement and the method of execution on the part of the Indians were approved by vote of the Tribes *in council assembled.* H. Doc. No. 156, 56th Cong., 2nd Sess., pp. 28-29; H. Doc. No. 79, 57th Cong., 1st Sess., p. 1. As a precedent, therefore, this agreement refutes rather than confirms the Government's contention, which overlooks the distinction between the authorization or approval of an act or agreement by a body corporate or politic and the formality of execution.

Point III.

The Indians who signed the alleged release did so under duress.

The opinion of the Court of Claims states that some fifty Indian witnesses testified without exception that the Superintendent of the Reservation stated to the Indians in substance "that if they did not accept the $108,750 and execute the release in question, they would lose both the land and money—they would get nothing." (R. 39.)

The Superintendent did not deny making substantially that statement, but testified that "it was not given in the manner of a threat or anything of that sort, just simply to explain that if they wanted that money that they must sign."

The respondents requested the court below to find that this statement was made, but the request was ignored. Whether intended by the Superintendent as a threat or not, the respondents were entitled to a finding that the statement was made so as to be able to contend as a matter of law that the mere making of it, particularly considering

the "weak and defenseless" position of those to whom it was made, constituted duress.

There being no room for dispute that the statement was made, it is hoped that if this Court shall deem the statement material, the respondent will consent to have the fact that it was made treated as a part of the record for the purposes of the case in this Court, without the necessity of sending the case back for a finding on the subject, as was done under similar circumstances in *Ceballos* v. *United States,* 214 U. S. 47, 49-50, 53 L. Ed. 904, 905.

If a threat by officers of the Government to break a contract, coupled with a showing of damage if the threat were carried out for which the remedy afforded by the Courts would be inadequate, be duress, *Hartsville Oil Mills* v. *United States,* 271 U. S. 43, 48-49, 70 L. Ed. 822, 827, and *Hazlehurst Oil Mills etc. Co.* v. *United States,* 70 Ct. Cl. 334, 350-351, for greater reason must it be duress to state to members of an Indian tribe whose property has been taken from them, and who at the time had no remedy at all in the courts, that if they do not accept in settlement the amount offered they will get nothing.

Respectfully submitted,

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